

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate
Salesperson License Application of
Hubert J. Hulton III

**RECOMMENDATION
ON MOTION FOR
SUMMARY DISPOSITION**

The above-entitled matter is before Administrative Law Judge Allan W. Klein on a Motion for Summary Disposition filed on behalf of the Department of Commerce (Department). The Department filed its motion with the Office of Administrative Hearings on March 15, 2004. No response was received from Petitioner, Hubert J. Hulton III, or from anyone on his behalf.

Jennifer DeKarske, Assistant Attorney General, NCL Tower, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, submitted the motion on behalf of the Department ("the Department"). Hubert J. Hulton III, 15074 Dunwood Trail, Apple Valley, MN 55124 has represented himself in this matter. The record on this Motion closed on March 25, 2004, with the expiration of the reply period to the Department's Motion.

Based upon the memoranda filed by the parties, all of the filings in this case, and for the reasons set forth in the accompanying Memorandum,

IT IS RECOMMENDED:

That the Commissioner of Commerce GRANT the Department's Motion for Summary Disposition.

Dated this 15th day of April, 2004.

S/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify this Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

Background Facts

Petitioner applied for a real estate salesperson license from the Department on July 16, 2003.^[1] The application listed Coldwell Banker Burnet as the real estate broker certifying that it would be responsible for Petitioner if the license application was granted.^[2] Because Petitioner disclosed a prior criminal conviction, the Department investigated his criminal history.^[3] The Department found that Petitioner had been convicted of a felony on October 31, 2002, for making terroristic threats.^[4]

Based on the short length of time since Petitioner's conviction, the Department recommended denial of Petitioner's license application.^[5] Petitioner was notified of the denial recommendation by letter, which also included a description of his right to appeal the recommendation.^[6] On November 5, 2003, Petitioner appealed the Department's denial of his license application.^[7]

In the course of preparing for the hearing in this matter, the Department contacted John Wichmann, Branch Vice President for the Coldwell Banker Burnet office listed on Petitioner's application.^[8] Mr. Wichmann indicated that Petitioner did not have a position with the Coldwell Banker Burnet organization.^[9]

Analysis

Summary disposition is the administrative equivalent to summary judgment.^[10] Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.^[11] A genuine issue is one that is not a

sham or frivolous, and a material fact is one which will affect the outcome of the case.^[12] The moving party must demonstrate that no genuine issues of material fact exist.^[13] If the moving party is successful, the non-moving party then has the burden of proof to show specific facts are in dispute which have an affect on the outcome of the case.^[14] It is not sufficient for the non-moving party to rest upon mere averments or denials; that party must present specific facts demonstrating a genuine issue for trial.^[15]

Minnesota law limits real estate salespersons to acting on behalf of a real estate broker. Minn. Stat. § 82.20, subd. 6 states:

Subd. 6. **Issuance of license; salesperson.** A salesperson must be licensed to act on behalf of a licensed broker and may not be licensed to act on behalf of more than one broker in this state during the same period of time. The license of each real estate salesperson shall be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until canceled or until such licensee leaves such broker.

The effect of this statute is to condition approval of a real estate salesperson license application upon affiliation with a licensed real estate broker. The Department maintains that Petitioner's application cannot be approved since Petitioner no longer is affiliated with a licensed real estate broker.

The Department maintains that no genuine issues of fact remain for hearing in this matter. Petitioner has not provided any information to suggest that he is affiliated with a real estate broker as required by Minn. Stat. § 82.20, subd. 6. Since that affiliation is required before the Department can issue a real estate salesperson license, there is no genuine issue of material fact to be decided in this matter. Petitioner does not meet the standard for issuance of a license and his appeal must be denied. Therefore, the ALJ has granted the Department's Motion for Summary Disposition and recommends that the Petitioner's appeal be dismissed.

A.W.K.

^[1] Affidavit of Cheryl Costello, Ex. A.

^[2] *Id.*

^[3] *Id.* ¶ 3.

^[4] Affidavit of Cheryl Costello, Ex. B.

^[5] *Id.* Ex. C.

^[6] *Id.*

^[7] Affidavit of Cheryl Costello, Ex. D.

^[8] Affidavit of Cheryl Costello, ¶ 7.

^[9] Affidavit of Cheryl Costello, Ex. F.

^[10] Minn. R. 1400.5500 (K).

^[11] *Id.*; Minn. R. Civ. P. 56.03.

^[12] ***Highland Chateau v. Minnesota Dep't of Pub. Welfare***, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984) *rev. denied*, Feb. 6, 1985.

^[13] ***Theile v. Stich***, 425 N.W.2d 580, 582 (Minn. 1988).

^[14] ***Highland Chateau v. Minnesota Dep't of Pub. Welfare***, 356 N.W.2d at 808.

^[15] Minn. R. Civ. P. 56.05.